



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148669

PRELIMINARY RECITALS

Pursuant to a petition filed April 08, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on May 15, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Health Care Access and Accountability (DHCAA) correctly modified Petitioner's request for personal care service hours.

NOTE: On May 21, 2013, Petitioner's attorney submitted a request by e-mail to supplement the record with a PCW Care Plan Instruction Sheet. The request was granted. The PCW Care Plan Instruction Sheet has been marked as Exhibit 4 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Jane L. Kirkeide
American Family Insurance
W236 N1402 Busse Road
Waukesha, WI 53188

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is 46 years old, and suffers from Down's Syndrome, incontinence, intracranial abscess and tetralogy of fallow. Petitioner is cognitively delayed, non-verbal and can only walk backwards with assistance. Petitioner uses a wheelchair because she has an unsteady gait. Petitioner is completely dependent upon others for her cares. (Testimony of Petitioner's guardian; Testimony from Colleen Dawson, Petitioner's nurse manager; Exhibit 2, pg. 20)
3. Petitioner previously received personal care services for 40 hours per week (8 hours per day for 5 days), with an additional 7 hours per week for travel time for the Personal Care Worker (PCW). (Testimony of Petitioner's guardian and Petitioner's nurse manager, Colleen Dawson)
4. On February 22, 2013, Petitioner's PCW service provider, Independence First, submitted on Petitioner's behalf, a request for prior authorization of Personal Care Service hours for 40 hours per week with an additional 7 hours per week for travel time, at a cost of \$48,574.50 for 53 weeks of service. (Exhibit 2, pg. 6)
5. On March 24, 2013, the DHCAA sent Petitioner a notice indicating that the request for Personal Care Service hours had been modified. (Exhibit 2, pgs. 27-30)
6. On March 24, 2013, the DHCAA sent Independence First a notice indicating that it modified the request for Personal Care Service hours, reducing the hours from 40 hours per week to 35 hours per week. (Exhibit 2, pgs. 31 and 32)
7. Petitioner's guardian filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 6, 2013. (Exhibit 1)

DISCUSSION

Personal Care Services are covered a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested services meet the approval criteria.

Petitioner requested 40 hours per week (8 hours per day, five days a week) of personal care service hours. The DHCAA approved 35 hours per week.

In determining how many hours of personal care services an individual is allowed, the service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line

provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal> under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. This can also be found at the aforementioned website. A copy of the table was also attached to the OIG letter, Exhibit 3.

The Personal Care Activity Time Allocation Table lists the maximum allowable time for each activity.

According to the OIG letter, the DHCAA allotted the maximum time available for the following activities:

1. Bathing; 30 minutes per day x 5 days	150 minutes per week
2. Dressing; 20 minutes per day x 5 days	100 minutes per week
3. Application of support hose; 10 minutes per day x 7 days	70 minutes per week
4. Eating 60 minutes per day x 5 days	300 minutes per week
5. Mobility 20 minutes per day x 5 days	100 minutes per week
6. Toileting 90 minutes per day x 5 days	450 minutes per week

	1170 minutes per week

The maximum time was not allotted for grooming or for transfers.

For grooming, the DHCAA allotted 15 minutes per day, once per day x 5 days. The Personal Care Screening Tool indicated that response F was marked, indicating that Petitioner depends entirely upon another person for grooming. According to Petitioner's guardian and nurse manager, Petitioner is so cognitively delayed that she wouldn't know what to do with a comb or toothbrush, even if you put the tool in her hand and told her what it was. Looking at the Personal Care Activity Time Allocation Table, it is appropriate to allocate the maximum time allowable, which is 15 minutes, twice a day for 5 days.

For transfers, the DHCAA allotted 30 minutes per day x 5 days. The maximum allowable time is 45 minutes per day. However, in order for the maximum time to be appropriate, the patient must need constant physical help and must be completely unable to participate in transfers. Petitioner is able to participate in her transfers, as she can bear some weight shuffling along with assistance/walking backwards. As such, it was appropriate for the DHCAA to allow 30 minutes per day for transfers.

The prior authorization request also included time for range of motion (ROM) exercises (30 minutes, twice a day, five days a week) and for setting up, cleaning and maintaining Petitioner's oxygen.

With regard to the ROM exercises, the DHCAA denied the request for this time asserting that no documentation showed a ROM deficit and the DHCAA opined that Petitioner could maintain her ROM through routine activities. However, the physician's order states, "Caregiver to assist Consumer with passive range of motion of upper/lower extremities, 2 times per day for strengthening, *prevention of further* contractures, comfort and promote blood flow..." It is unlikely Petitioner's physician would order ROM exercises, if Petitioner did not already have an issue with contractures and/or her range of motion. Further, it is more cost-effective for Petitioner to do ROM exercises at home to maintain her ROM, rather than to eliminate the service and pay for physical therapy, occupational therapy or surgery to correct the problem down the road. Consequently, it is found that allocation of time for ROM exercises is appropriate, although 60 minutes per day seems excessive, especially since the physician's order does not specify a time frame. Two, 20 minute sessions per day is more reasonable.

With regard to setting up cleaning and maintaining Petitioner's oxygen, Petitioner has not explained why such activities cannot be completed during the time allocated for incidental tasks. Per the on-line Provider Handbook, topic 3165, time equal to ¼ of the time it actually takes to complete Activities of Daily Living

(ADLs) and Medically Oriented Tasks (MOTs) may be allocated for incidental cares. The DHCAA allowed for this time, although some adjustment needs to occur, given the aforementioned additions to Petitioner's personal care service hours.

The actual time needed to completed Petitioner's ADLs and MOTs is as follows:

1. Bathing; 30 minutes per day x 5 days	150 minutes per week
2. Dressing; 20 minutes per day x 5 days	100 minutes per week
3. Application of support hose; 10 minutes per day x 7 days	70 minutes per week
4. Eating 60 minutes per day x 5 days	300 minutes per week
5. Mobility 20 minutes per day x 5 days	100 minutes per week
6. Toileting 90 minutes per day x 5 days	450 minutes per week
7. Grooming 30 minutes per day x 5 days	150 minutes per week
8. Transfers 30 minutes per day x 5 days	150 minutes per week

	1470 minutes per week.

One fourth of 1470 minutes is 367.5 minutes. So, Petitioner may receive an additional 367.5 minutes per week to attend to the equipment for her oxygen in addition to any other incidental activities.

At the hearing, Petitioner's guardian and his nurse expressed concern that not enough time was being allocated to allow for times when Petitioner is resistant to assistance due to her anxiety or when she requires additional oxygen because of her anxiety. However, DHCAA allowed time for behaviors which might interfere with services being provided to Petitioner.

Per the on-line Provider Handbook, topic 3165, time equal to ¼ of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated when there are behaviors that interfere with the provision of personal care services. In this case, that would be an additional 367.5 minutes per week.

Totaling all of the time allowable for Petitioner we have:

1470 minutes per week for ALDs and MOTs
200 minutes per week ROM exercises
367.5 minutes per week for incidental activities
367.5 minutes per week for behaviors that interfere with services

2405 minutes per week ÷ 60 = 40.08 hours per week of personal care service hours

I note to the petitioner that her provider, Independence First will not receive a copy of this Decision. In order to have the requested personal care services hours approved, the petitioner must provide a copy of this Decision to Independence First, who must then submit a *new* prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

The DCHAA incorrectly modified Petitioner's request for personal care service hours.

THEREFORE, it is

ORDERED

That Independence First submit a claim and new prior authorization request, together with a copy of this decision, to Forward Health for payment of 40 hours of personal care service hours per week for 53 weeks, along with 7 hours per week of travel time for the PCW.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

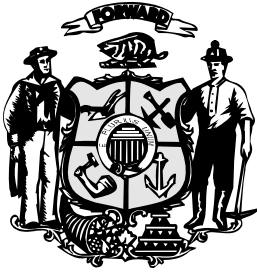
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of May, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 22, 2013.

Division of Health Care Access And Accountability
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